

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

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| In the Matter of the Commission, on |) | Rule and Regulation No. 170 |
| its own motion, seeking to amend |) | |
| Title 291, Chapter 7, Transmission |) | |
| Lines Rules and Regulations, to |) | |
| adopt rules regarding wires cross- |) | ORDER OPENING DOCKET AND |
| ing any railroad track at public |) | SEEKING COMMENT |
| highway crossings in the State of |) | |
| Nebraska in accordance with <u>Neb.</u> |) | |
| <u>Rev. Stat.</u> §§ 75-702 to 75-724. |) | Entered: August 28, 2007 |

BY THE COMMISSION:

O P I N I O N A N D F I N D I N G S

The Nebraska Public Service Commission (Commission), on its own motion, hereby opens this proceeding to amend Title 291, Chapter 7, Transmission Lines Rules and Regulations, to adopt rules regarding wires crossing any railroad track at public highway crossings in the State of Nebraska in accordance with Neb. Rev. Stat. §§ 75-702 to 75-724.

Nebraska Statutes, 75-702 et seq., grant the Commission authority of general supervision and to regulate the crossing of wires across railroads right-of-way at public highways within the state. Under the provisions of the statutes, the Commission is given the authority to promulgate rules and regulations to administer the provisions of the statutes.

To that end, the Commission proposes to amend Title 291, Chapter 7, Transmission Lines Rules and Regulations, as seen in the attached Appendix, incorporated herein by this reference.

Comments on the proposed amendments may be filed by interested parties on or before **5:00 p.m., October 12, 2007**. Parties filing comments should file one original and eight (8) paper copies and one (1) electronic copy emailed to deena.kumke@psc.ne.gov. The Commission will schedule a public hearing on the proposed amendments once it receives permission from the Governor's Policy Research Office to proceed.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that this rulemaking amending Title 291, Chapter 7, Transmission Lines Rules and Regulations, to adopt rules regarding wires crossing any railroad track at public highway crossings in the State of Nebraska in accordance with Neb. Rev. Stat. §§ 75-702 to 75-724 be, and it is hereby, open for public comment.

IT IS FURTHER ORDERED that interested parties file comments on or before **5:00 p.m., October 12, 2007**. Commenting parties shall file one original and eight paper copies along with one electronic copy emailed to deena.kumke@psc.ne.gov.

MADE AND ENTERED at Lincoln, Nebraska, this 28th day of August, 2007.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chair

ATTEST:

Deputy Director

APPENDIX

Amendments to Nebraska Administrative Code, Title 291, Chapter 7,
Transmission Lines Rules and Regulations

Insert the following new section.

003 TRANSMISSION LINES AND WIRES CROSSING RAILROAD TRACKS AT PUBLIC HIGHWAYS:

003.01 General: This section applies to all transmission lines and wires crossing railroad rights-of-way at public highways within the state. Nothing in this section shall be construed to reduce or negate the requirements and obligations pertaining to transmission lines subject to the provisions of Section 002.

003.02 Procedures for Negotiation and Approval of Agreements: Upon receiving a request to place any wire across any railroad track at a public highway, a railroad and the entity requesting crossing may negotiate and enter into a binding wire crossing agreement. The railroad and the crossing entity shall have sixty (60) days from the receipt of the request for crossing to voluntarily negotiate a binding agreement. The agreement shall include a detailed schedule of terms, conditions and charges. The agreement shall be submitted to the Commission pursuant to Section 003.05.

003.03 Notification of Commission: Within five (5) days of submitting a request to a railroad for negotiation of a wire crossing agreement pursuant to Section 003.02, the crossing entity shall notify the Commission that a request for a wire crossing was submitted.

003.04 Failure to Reach Agreement; Hearing: If the railroad and crossing entity are unable to negotiate a binding wire crossing agreement within sixty (60) days as provided under Section 003.02, either party may petition the Commission, requesting a hearing on the disputed terms, conditions and charges of the wire crossing agreement.

003.04A Duties of Parties Requesting Hearing: A party that files a petition for hearing under Section 003.04 shall include all relevant documentation concerning the unresolved issues and the position of the petitioning party with respect to those issues.

003.04B Notice: A party that submits a petition for hearing under Section 003.04 shall serve a copy of the petition and any other documentation on the other party or parties not later than the day on which the Commission receives the petition for hearing.

003.04C Opportunity to Respond: The non-petitioning party under Section 003.04 shall respond to the petition and provide any relevant documentation concerning the unresolved issues and the position of the non-petitioning party with respect to those issues within fifteen (15) days after service of the petition.

003.04D Action of the Commission:

003.04D1 The Commission shall limit its consideration of any wire crossing dispute to the issues set forth in the petition and in the response filed under Section 003.04C. The Commission may require the parties to provide such information as may be necessary for the Commission to reach a decision on the unresolved issues.

003.04D2 Upon petition for hearing by a party to the wire crossing dispute, the Commission shall set a hearing date not later than ninety (90) days from the date of the petition except for good cause shown. In no event shall a hearing be set later than six (6) months from the date of the petition. The Commission shall have thirty (30) days from the date of hearing to issue an order resolving each issue set forth in the petition and the response with written findings and opinions. In determining the terms, conditions and charges, the Commission shall consider whether such terms, conditions and charges are fair, just and reasonable and in the public interest.

003.05 Submission of Agreement to Commission: Any wire crossing agreement adopted by negotiation shall be submitted to the Commission. The Commission shall have thirty (30) days from the date of filing to approve or reject the agreement or the agreement will be deemed approved. The Commission may reject a wire crossing agreement if it finds that the wire crossing agreement is not in the public interest. If the Commission rejects the wire crossing agreement, it shall conduct a hearing and issue an order determining the terms, conditions and charges of the wire crossing agreement.

003.06 Public Highway Defined: For purposes of this Section, Public highway shall mean any street, road, avenue, boulevard, or way which is publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

003.07 Appeals: A party seeking to obtain reversal, modification, or vacation of an order entered by the Commission pursuant to this Section may appeal such order in accordance with the state's Administrative Procedure Act.